

**FILED**  
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U.S. DISTRICT COURT E.D.N.Y.  
★ **SEP 05 2017** ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOHNSON & JOHNSON AND LIFESCAN, INC.,

Plaintiffs,

v.

SOUTH POINTE WHOLESALE, INC., et al.,

Defendants.  
-----X

1:08-cv-01297-SLT-SMG

~~[CORRECTED]~~  
**STIPULATION AND**  
~~[PROPOSED]~~ **ORDER**

**BROOKLYN OFFICE**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs Johnson & Johnson and LifeScan, Inc. (collectively "J&J") Defendants Randy Crowell and Green Valley Medical Distributors, LLC (collectively "Green Valley"), through their undersigned counsel, as follows:

WHEREAS, on April 15, 2013 J&J filed its fully briefed Motion for Summary Judgment (*see* Dkt. Nos. 746-747); and

WHEREAS, on April 17, 2013 the Court referred J&J's motion to the Honorable Steven M. Gold, Chief Magistrate Judge, for a Report and Recommendation ("R&R") (*see* Dkt. No. 750); and

WHEREAS, on March 28, 2014 Magistrate Judge Gold issued an R&R in which he recommended that:

1) [P]laintiffs' motion for summary judgment on their trademark infringement claims, brought under 15 U.S.C. § 1114(1)(a), and on their false description claims, brought under 15 U.S.C. § 1125(a)(1)(A), be granted against the Novex Defendants with respect to 116,736 counterfeit boxes of blood glucose test strips; against the Green Valley Defendants with respect to 5,376 counterfeit boxes of test strips; against the MSI Defendants with respect to 90,604 counterfeit boxes of test strips; against the Cobra Defendants with respect to 456 counterfeit boxes of test strips; and against the H&H Defendants with respect to 20,244 counterfeit boxes of test strips;

2) [P]laintiffs' motion for summary judgment dismissing the affirmative defenses of unclean hands, laches, acquiesce, and waiver be granted;

3) [P]laintiffs' motion for summary judgment awarding enhanced statutory damages and permanent injunctive relief for willful infringement against the H&H Defendants be denied; and

4) [P]laintiffs' motion for entry of default judgments against the Midwest Defendants be denied, and their claims against the Midwest Defendants be dismissed.

(Dkt. No. 769 at 66); and

WHEREAS, several sets of defendants filed objections to the R&R in April and May of 2014 (*see* Dkt. Nos. 793; 799; 803-805), and J&J subsequently filed its response in opposition to the objections on June 27, 2014 (*see* Dkt. No. 807); and

WHEREAS, J&J has settled with the H&H Defendants and the MSI Defendants and the Court has so-ordered a consent judgment against those defendants (*see* Dkt Nos. 816-817); and

WHEREAS, there are no pending settlement discussions among any of the remaining defendants and defendant Dennis Cantor continues to have \$1 million held in escrow pursuant to the Court's 2008 Preliminary Injunction order; and

WHEREAS, on January 6, 2017 Randy Crowell, the owner of Green Valley, pled guilty to fraudulently distributing prescription drugs, and agreed to forfeit more than \$13 million in personal profits from the scheme (*see* USA v. Crowell, No. 1:15-cr-840-ER-1, Dkt. No. 31 (S.D.N.Y. Jan. 6, 2017)); and

WHEREAS, on May 11, 2017 Randy Crowell was sentenced by United States District Judge Edgardo Ramos to a term of five (5) years imprisonment (*see* USA v. Crowell, No. 1:15-cr-840-ER-1, Dkt. No. 47 (S.D.N.Y. June 8, 2017)); and

WHEREAS, Green Valley no longer has any assets and Randy Crowell needs to liquidate the company pursuant to his plea agreement;

IT IS THEREFORE STIPULATED AND AGREED:

- (1) The above-captioned action against Green Valley only shall be dismissed with prejudice and without costs; and
- (2) Dennis Cantor, Novex America, Inc. d/b/a Novex International and Randy Crowell remain Defendants in the action and await the Court's decision on Defendants' objections to Judge Gold's R&R.

Dated: August 28, 2017

CONSENTED AND AGREED TO BY:

PATTERSON BELKNAP WEBB & TYLER LLP GOODMAN & SAPERSTEIN

By: /s/ Geoffrey Potter  
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*Attorneys for Defendants Green Valley  
Medical Distributors, LLC and Randy  
Crowell.*

IT IS SO ORDERED:

/s/ Sandra L. Townes  
UNITED STATES DISTRICT JUDGE

DATE: August 31, 2017